RECORD AND BRIEFS

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In The

Supreme Court of the United States

MICHELLE K. LEE, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

SIMON SHIAO TAM,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF *AMICUS CURIAE* PRO-FOOTBALL, INC. IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE* [1]

Amicus Pro-Football, Inc. (the "Team" or "Redskins") owns and operates the National Football League's Washington Redskins. The Team has a substantial interest in whether the disparagement clause in § 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), violates the First Amendment. In 2014, the PTO invoked § 2(a) to schedule the cancellation of six of the Team's Redskins trademark registrations on the theory that the trademarks disparaged Native Americans when the PTO registered the first mark in 1967. The U.S. District Court for the Eastern District of Virginia affirmed the cancellations. *Pro-Football, Inc. v. Blackhorse*, 112 F. Supp. 3d 439 (E.D. Va. 2015). The Team appealed; the case is fully briefed; and the Fourth Circuit has placed the appeal in abeyance pending this Court's decision here. *Pro-Football, Inc. v. Blackhorse*, No. 15-1874.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 2(a)'s ban on the registration of disparaging trademarks is facially unconstitutional. At minimum, the ban is unconstitutional as applied to the cancellation of existing registrations.

A. The disparagement clause triggers strict scrutiny. Trademarks are names, symbols, and logos that communicate powerful messages: they allow audiences to connect trademark owners with their

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[1] No counsel for a party authored this brief in whole or in part. No one other than *amicus curiae*, its members, its member association, or *amicus*'s counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties have consented to the filing of this brief, and copies of the letters of consent are on file with the Clerk's Office.

goods or services. When the PTO registers a trademark, the PTO confers on the mark special legal status and legal protections from interference by third parties. The PTO acts as regulator in registering trademarks, just like the government acts as regulator when it issues patents or registers copyrights.

Denying legal protection to disfavored speech blatantly violates the First Amendment. The disparagement clause impermissibly discriminates on the basis of both disfavored content and viewpoint. The government expressly concedes that the clause is content-based. Br. 11, 36. The government also implicitly concedes that it is viewpoint-based. The government acknowledges that the clause targets only racial *slurs*, *crude* references to women's anatomy, and *demeaning* depictions of religious figures, while leaving unburdened speech that expresses a positive or neutral viewpoint on those same subjects. Br. 10, 28.

B. Section 2(a) fails even intermediate scrutiny. Congress did not pass the Lanham Act as civil rights legislation. The Act does not directly further the government's interest in protecting underrepresented groups from racial slurs, misogyny, or demeaning religious messages. If social justice were the goal, the disparagement clause overshoots it by a mile. The clause applies to *all* persons, institutions, and beliefs. The statute therefore equally protects racists, misogynists, and blasphemers from disparagement. The same is true for racist, misogynist, and blasphemous institutions and beliefs.

The PTO does not rigorously enforce the statute. And when it does, the PTO's actions are arbitrary and wildly inconsistent. *Amicus* regrets that it is necessary to use offensive language in a brief to this

Court. But reference to the range and pervasiveness of the PTO's startling registrations disproves that § 2(a) furthers significant government interests, that these registrations reflect merely occasional errors, and that the PTO applies the statute rationally and evenhandedly. The PTO has registered marks such as YARDAPES landscaping services; AFRO-SAXONS and DAGO SWAGG clothing; BAKED BY A NEGRO baked goods; CRIPPLED OLD BIKER BASTARDS clothing; YID DISH online dating newsletter; CRACKA AZZ SKATEBOARDS skateboards and apparel; RETARDIPEDIA entertainment services, and many more similar marks. The PTO has registered BOOBS AS BEER HOLDERS adult-themed videos and photos; VAJAYJAY HAT party hats; and MATCH-A-SNATCH playing cards. The Appendix contains additional examples, and is by no means exhaustive.[2]

These registrations similarly defeat the government's assertion that § 2(a) "avoid[s] the incorporation of objectionable marks into official government communications, and the consequent association of the marks with the government itself." Br. 11, 28. Over two million registered marks for countless goods and services render the Principal Register incapable of communicating any government message.

C. The government argues that although no "discrete analytic" category supports upholding § 2(a), this Court should combine government speech and subsidy principles to hold that trademark regis-

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[2] The PTO has registered all marks appearing in this brief in small-cap font. The registrations in the Appendix appear in alphabetical order. These and other registrations are available by searching the PTO's database. *See* PTO, Trademark Electronic Search System, http://tmsearch.uspto.gov.

tration permits rank discrimination against disfavored speech. Br. 43. The government's brief refers to trademark registration 89 times as a government program, 26 times as government assistance, and 25 times as a government subsidy. But to our knowledge, in the 70 years since the passage of the Lanham Act, the PTO has never described trademark registration in any of these terms, or treated registrations as government speech.

Instead, the PTO aptly describes the registration process as a legal proceeding, and this Court has explained that registration confers legal status, protection, and rights. *B&B Hardware, Inc. v. Hargis Indus.*, 135 S. Ct. 1293, 1299–1301 (2015). Legal proceedings and advantages are not government subsidies, much less platforms for government speech. The government's theory would open the floodgates to discrimination based on disfavored content, viewpoint, and speakers in other government-regulatory schemes, including copyright registration.

But the consequences would be staggering even were this Court to adopt a for-this-case-only theory of the First Amendment. Two million registered trademarks would overnight become government-subsidized names and government speech. Marks like those set forth in the Appendix, including YO' ASS FACE; I WORK HARD BITCH; TRANNY SURPRISE; SMACK MY ASS & CALL ME SALLY; RELIGION KILLS; SEX SENT ME TO THE SLAMMER; LAUGHING MY VAGINA OFF; ANAL FANTASY COLLECTION; BUSH PANTY; BLACKGIRLSDOPORN.COM; and TEENSDOPORN.COM, would have the full backing of, and bear the official seal of approval from, Uncle Sam. What's more, Uncle Sam would be the one speaking. The same would be true for all registered logos, such as numerous

confederate flags and lewd depictions of women's anatomy, including those on the registered marks SPANK ME CARDS.COM, RIDE DOGGIE STYLE, and EWHIP.COM. The PTO cannot, on its own initiative, rid the registry of these or similar registrations. Registration is thus not analogous to government speech. Either the PTO has unfettered control over the government's message, or registration does not reflect the government's message.

D. However the Court rules with respect to the PTO's *initial* refusal to register marks, § 2(a) cannot be constitutionally applied to *cancel* existing registrations. If the government cancels a registration because it historically may have disparaged a group, the government's purported interests in protecting the affected group or disassociating itself from disfavored speech are incoherent. Those interests relate to the impact that the mark has on the group *today*, not its historical impact. The chilling of speech and the upending of reliance interests are magnified exponentially when the mark owner has relied on the protections of registration in investing in its brand. And cancellation forces mark owners to defend against claims of historical offense when relevant witnesses may no longer be alive and key documents may no longer exist.

The Redskins' case illustrates the fundamental constitutional principles at stake. The Redskins are one of the most storied franchises in sports. The Team adopted the Redskins name in 1933, and the PTO registered six Redskins marks on six separate occasions from 1967 to 1990, without objection from anyone. Yet in 2014, the PTO granted a petition brought by five Native Americans to cancel the Team's registrations because the Redskins' name

may have disparaged an unspecified percentage of Native Americans starting in 1967. The PTO was indifferent to whether Native Americans today overwhelmingly do not find the name disparaging. Likewise, the PTO expressed no concerns with transmitting the Team's name abroad for half of a century.

Upholding the statute in the cancellation context would permit extraordinary abuses of government power. Anyone offended by a registered mark can seek cancellation, no matter the registration's age, no matter the number of times that the PTO previously registered the mark, and no matter the consequences to the owner's brand or consumers. Any person belonging to the referenced group can seek cancellation based on the mark's allegedly disparaging meaning in the past, whether or not the person was alive at the time of registration, whether or not any member of the group objected at the time of registration, whether or not anyone besides the person seeking cancellation currently finds the mark disparaging, whether or not the person ever purchased the mark's good or service, whether or not a foreign country ever complained about the mark, and whether or not relevant witnesses or pertinent records still exist. And the PTO will cancel the registration so long as the person shows that some unspecified percentage of the referenced group *may* have perceived, to some unspecified non-trivial degree, that the mark was unflattering to the group (or for that matter, to any institution or belief) when the mark was registered.

The constitutional guarantees of free speech and fundamental fairness prevent this kind of madness.

ARGUMENT

SECTION 2(a) VIOLATES THE FIRST AMENDMENT, PARTICULARLY IN THE CANCELLATION CONTEXT

Section 2(a) bars registration of trademarks that "may disparage . . . persons, living or dead, institutions, [or] beliefs . . . or bring them into contempt, or disrepute." 15 U.S.C. § 1052(a). That language facially discriminates against protected speech based on disfavored content and viewpoint and is thus unconstitutional. At a minimum, the clause cannot be constitutionally applied to cancel existing registrations.

A. Section 2(a) Triggers Strict Scrutiny

Registration of trademarks, like any registration scheme, is purely regulatory. As such, Congress cannot condition the "procedural and substantive legal advantages" guaranteed by the Lanham Act, *B&B Hardware*, 135 S. Ct. at 1300, on a requirement that the mark owner change its name. Such burdens trigger strict scrutiny, and the government has never argued that the statute survives this exacting standard.

1. Trademarks Are Fully Protected Speech

Trademarks are names that are expressive in their own right, and they enable mark owners to associate all of their other speech—commercial or otherwise—with their brands. Just as an individual needs a name to function at home, work, and in society, individuals and organizations rely on trademarks to communicate to the public when providing a good or service. Their very "function" is "psychological," *Mishawaka Rubber & Woolen Mfg. Co. v.*

S.S. Kresge Co., 316 U.S. 203, 205 (1942)—to "carry[] meaning," *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 162 (1995).

Countless marks speak for themselves: AMBULANCE CHASERS SUCK; I HATE MY TEENAGE DAUGHTER; and STOP COMPLAINING ABOUT YOUR BABY DADDY, YOU PICKED HIM! But all marks are inherently expressive, whether or not the speaker is motivated by profit. HERSHEY'S and MERCEDES-BENZ signal a certain quality of chocolate or automobile. THE NEW YORK TIMES and FOX NEWS CHANNEL signal certain types of news. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, MARCH OF DIMES, NATIONAL RIFLE ASSOCIATION, and REPUBLICAN NATIONAL COMMITTEE communicate certain religious, charitable, or political missions. HARVARD UNIVERSITY signals the source and quality of educational services.

The expressive value of marks is readily apparent for respondent's and the Team's marks for entertainment services. Entertainment is inherently expressive, and entertainers' names are inextricably intertwined with the entertainment services they provide. Names are powerful. The marks THE 2 LIVE CREW and NEW YORK PHILHARMONIC conjure up very different emotions and associations with music. The same is true for the names of sport teams, ballets, musicals, or improvisational comedies.

That mark owners act for a profit is of no moment. "Some of our most valued forms of fully protected speech are uttered for a profit." *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 482 (1989); *see, e.g., N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964). It is thus irrelevant that registration requires that trademarks be "in use in commerce." 15 U.S.C. § 1051(a)(3)(C). Neither Congress's exercise

of Commerce Clause power nor an owner's profit motive insulates government burdens on speech from strict scrutiny. For instance, *United States v. Stevens* applied strict scrutiny to a statute criminalizing depictions of animal cruelty "done for 'commercial gain' in interstate or foreign commerce." 559 U.S. 460, 464–65 (2010) (quoting 18 U.S.C. § 48). For-profit companies also use their registered names to engage in *non*-commercial speech. *Nike, Inc. v. Kasky*, 539 U.S. 654, 656 (2003) (Stevens, J., concurring in dismissal of the writ).

In any event, countless non-profit organizations use registered trademarks to engage in purely political, religious, or similar speech not for profit. EVANGELICAL LUTHERAN CHURCH IN AMERICA, SOUTHERN POVERTY LAW CENTER, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, and UNITED STATES HOLOCAUST MEMORIAL MUSEUM are but a few. Although these non-profits must use their marks in commerce to obtain registration, they do not communicate with a commercial purpose or in a commercial capacity. Religious, charitable, political, and other non-profit speakers receive the federal protections that come from registration because these speakers use their marks across state lines. And because this case involves a facial challenge, the government must show that regulatory burdens on these marks would not trigger strict scrutiny. *Stevens*, 559 U.S. at 472–73.

Regardless of the type of mark at issue, § 2(a) "is squarely based on the expressive aspect of the speech, not its commercial-speech aspects." Pet. App. 61a–62a. The PTO looks to whether a mark disparages a referenced group, over and above the mark's source-identification function. And even

when marks operate purely in the commercial arena, because § 2(a) discriminates against viewpoint, *see infra* pp. 12–13, the disparagement clause is subject to at least "heightened scrutiny." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011).

Several *amici* argue that trademarks deserve less protection because trademarks prevent third parties from speaking freely. *See, e.g.*, Brief for *Amici* Blackhorse et al. 9–12; *cf.* Gov't Br. 40. But trademark law prevents speech that causes consumer confusion or constitutes theft of intellectual property. The First Amendment does not protect speech that misleads consumers. *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003). It similarly "gives no right to steal another's statutorily protected intellectual property." *Walt Disney Co. v. Powell*, 698 F. Supp. 10, 12 n.2 (D.D.C. 1988); *see Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539 (1985); *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562 (1977).

Judge Dyk opined below that trademarks involve only commercial speech unless the mark communicates "core political expression" such as respondent's mark. Pet. App. 103a (Dyk, J., concurring in part and dissenting in part). The decision below explained that respondent seeks, through the name of his all Asian-American band, to reclaim a slur as a source of pride. *Id.* at 10a. The government rightly disavows Judge Dyk's approach as impermissibly viewpoint-based. Br. 46–47 n.12.

Such a distinction is also unconstitutionally *speaker*-based. *Sorrell*, 564 U.S. at 580. The PTO cannot treat two speakers differently depending on the speaker's motivation for choosing the name. Serious equal-protection concerns likewise would be

triggered if the government provided legal protection to disparaging names only when the mark owner belongs to the referenced group. The distinction also would be impossible to administer. What if one non-Asian-American joined The Slants. Two? And would the government be required to accept the mark owner's representation as to motive for choosing the name?

2. *Section 2(a) Impermissibly Burdens Disfavored Speech*

Registering trademarks—just like registering copyrights or issuing patents or video-poker licenses—is regulatory in nature and does not give rise to any proprietary government interest. *Cleveland v. United States*, 531 U.S. 12, 23–24 (2000). In exchange for meeting statutory criteria, the government confers on registered marks "legal rights" and "legal advantages" to "protect" those marks against interference from third parties. *B&B Hardware*, 135 S. Ct. at 1299–1301 (quotation marks omitted). The PTO similarly advises the public that registration is a "legal proceeding."[3]

Because registration is regulatory, this case is straightforward. "Content-based laws—those that

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[3] *See, e.g.*, PTO, *Trademark Basics*, https://www.uspto.gov/trademarks-getting-started/trademark-basics ("The trademark registration process is a legal proceeding[.]"); PTO, *Basic Facts About Trademarks*, https://www.uspto.gov/sites/default/files/trademarks/basics/printable_transcript_Trademark_Basics_presentation.doc ("[T]he trademark registration process is pretty complex. It is, technically, a legal proceeding[.]"); PTO, *Do I Need a Trademark Attorney?*, https://www.uspto.gov/trademarks-getting-started/using-legal-services/do-i-need-trademark-attorney ("The filing of a trademark application begins a legal proceeding[.]").

target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). "Government discrimination among viewpoints . . . is a more blatant and egregious form of content discrimination." *Id.* at 2230 (quotation marks omitted). The First Amendment "stands against attempts to disfavor certain subjects or viewpoints." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010). And because the government has never argued that § 2(a) satisfies strict scrutiny, the statute is facially unconstitutional if it is either content- or viewpoint-based.

Section 2(a)'s bar on registering disparaging marks is content-based because it is a "speech regulation targeted at specific subject matter." *Reed*, 135 S. Ct. at 2230. Section 2(a) is viewpoint-based because it facially regulates speech based on a "particular point of view," *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 383–84 (1984), *i.e.*, the statute "discriminate[s] among viewpoints within [a] subject matter." *Reed*, 135 S. Ct. at 2230; *see* Pet. App. 21a–24a.

The government's brief concedes the former (at 11, 36) and inadvertently demonstrates the latter. The brief explains that § 2(a) bars registration of "marks containing *crude* references to women based on parts of their anatomy; the most repellent racial *slurs* and white-supremacist slogans; and *demeaning* illustrations of the prophet Mohammed and other religious figures." Br. 10, 28 (emphases added). Exactly. The words "crude," "slurs," and "demeaning" are unabashedly and paradigmatically viewpoint-based.

Section 2(a) does not target *all* references to women, *all* references to women's body parts, *all* commentary on race, or *all* depictions of religious figures. Rather, § 2(a) burdens speech only if and when it conveys a negative viewpoint towards the subject matter at issue. The statute targets viewpoint in its most injurious form: it bars registration of marks that express a critical opinion or perspective. *Id.* Accordingly, § 2 "driv[es] ideas from the market place." Gov't Br. 48.

The government argues that § 2(a) is viewpoint-neutral because it operates without regard to "the ideology, opinion, or perspective of the trademark owner." Br. 46 (quotation marks omitted). But that is non-responsive. The statute still discriminates on the basis of viewpoint. Section 2(a) bars registration based on the "ideology, opinion, or perspective" that the mark purportedly *expresses* to the referenced group. "It is thus the viewpoint of the message conveyed which causes the government to burden the speech." Pet. App. 23a.

3. This Court's Precedents Foreclose the Government's "But You Can Still Speak" Argument

Citing the text of the First Amendment, the government argues that § 2(a) "does not abridge respondent's freedom of speech" because "it does not restrict [his] ability to use [his] mark or to engage in any other speech." Br. 25–26. As such, the government argues that § 2(a) "is reviewed for a rational basis." Br. 48. But speech is restricted whenever the government denies protection to disfavored speech. Section 2(a) forces mark owners to change their names and brand identities to obtain the legal protections of registration. This is precisely what the First Amendment is designed to prevent. The gov-

ernment's theory would gut this Court's First Amendment jurisprudence and open up any number of regulatory programs, such as copyright registration, to discrimination based on disfavored content, viewpoint, and speakers.

The First Amendment's exacting scrutiny applies to regulatory burdens as well as outright bans on speech. The "government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). "[T]he distinction between laws burdening speech is but a matter of degree[,] . . . and the Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Sorrell*, 564 U.S. at 565–66 (quotation marks omitted). "The threat to the First Amendment arises from the imposition of financial burdens that may have the effect of influencing or suppressing speech, and whether those burdens take the form of taxes or some other form is unimportant." *Pitt News v. Pappert*, 379 F.3d 96, 111–12 (3d Cir. 2004) (Alito, J.).

Sorrell invalidated a state law that did not abridge speech but nonetheless burdened pharmaceutical marketing by denying manufacturers access to, and the right to use, information that made their marketing more effective. After referencing burdens over 30 times, *Sorrell* held that "the State has burdened a form of protected expression," while leaving "unburdened those speakers whose messages are in accord with its own views." 564 U.S. at 580; *see also Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991); *Ark. Writers' Project Inc. v. Ragland*, 481 U.S. 221, 227–

28 (1987); *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 582–83 (1983). Moreover, as explained in *Sorrell*, 564 U.S. at 568–69, eight Justices in *Los Angeles Police Department v. United Reporting Publishing Corp.*, 528 U.S. 32 (1999), endorsed the principle that the First Amendment bars governments from denying generally available benefits based on content or speakers.

The government's "but you can still speak" theory has no logical stopping point and would insulate numerous denials of regulatory benefits from any First Amendment scrutiny. Take the similarities between copyright and trademark registration. "[R]egistration is not a condition of copyright protection" but only "provides several . . . advantages." U.S. Copyright Office, *Copyright Basics* 7, http://copyright.gov/circs/circ01.pdf. Cancelling a registration leaves copyright owners free to perform or sell their works. Cancellation neither restricts nor prevents copyright owners from expressing any message. Or in the government's words (at 26), cancelling respondent's copyright registrations would "not limit . . . what songs he may sing, how he may advertise, or what messages he may convey, through his band or in his own private speech." Indeed, trademarks and copyrights can protect the same speech, like Mickey Mouse, "crude" depictions of women's anatomy, or "demeaning illustrations of the prophet Mohammed." Gov't Br. 10, 28.

The government's position would permit it to penalize disfavored speakers by refusing to issue parade permits, repair roads or remove snow around their businesses, or provide fire or police protection. The same goes for birth certificates or any other registration or recordation scheme. States could cancel

the birth certificates of Joe Slants (or Joe Redskins) for any or no reason, without triggering First Amendment review. *Cf. There Are Far More People Named Hitler than You'd Think*, Vice.com (Sept. 22, 2014), http://www.vice.com/read/meet-the-hitlers-matt-ogens-interview-183. In all these cases, the First Amendment would be triggered even though the speakers can still communicate their views.

The government argues (at 26) that § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), gives limited protections to unregistered marks. That misses the point. Registration confers significant *additional* legal protections, and "[t]he loss of these rights, standing alone, is enough" to trigger the First Amendment. Pet. App. 40a. Indeed, if trademark registration did not confer more protection than § 43, no one would register their trademarks.

B. Section 2(a) Fails Even Intermediate Scrutiny

Even were this Court to apply intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, § 2(a) does not directly advance a substantial governmental interest. 447 U.S. 557, 564–66 (1980); *see Sorrell*, 564 U.S. at 571–72.

1. Section 2(a) Cannot Be Justified As Protecting Underrepresented Groups

The government erroneously argues that § 2(a) protects underrepresented groups from demeaning messages. Br. 10, 28, 48.

Disapproval of speech or desire to prevent offense is "classically not a justification" for burdening speech, much less a substantial interest. *Bolger v.*

Youngs Drug Prods. Corp., 463 U.S. 60, 71–72 (1983) (alterations omitted); *Snyder v. Phelps*, 131 S. Ct. 1207, 1219–20 (2011); *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 55 (1988).

The disparagement clause is not designed to promote racial or social justice. Congress was not concerned with protecting underrepresented groups when it enacted § 2(a) in 1946. Congress instead worried about "Abraham Lincoln gin" and marks that disparaged "people of eminence" and institutions like "Harvard" and the "New York Athletic Club." *Hearings on H.R. 4744 Before the Subcomm. on Trademarks of the H. Comm. on Patents*, 76th Cong. 18–21 (1939) (*Hearings*). The statute refers to *all* "persons, living or dead," "beliefs," or "institutions." 15 U.S.C. § 1052(a). The government interprets the statute to protect not just minority groups, but also any well-represented group, including politicians, billionaires, birders, bookworms, blondes, lawyers, and vegetarians. Gov't Br. 24–25, 46.[4]

The statute thus extends beyond groups that society admires, such as teachers, librarians, and clergy. The statute equally protects racists, white supremacists, misogynists, fascists, xenophobes, terrorists, and dictators. The government cannot justify § 2(a) as combatting racism if the statute protects racists. Similarly, because § 2(a) applies to "beliefs," the statute bars registration of marks that disparage

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[4] The Team agrees with respondent that § 2(a) applies only to identifiable persons, not to groups as a whole. Resp. Br. 46–53. At a minimum, principles of constitutional doubt command a narrowing construction. *See* Opening Brief of Appellant at 45–46, *Pro-Football, Inc. v. Blackhorse*, No. 15-1874 (4th Cir. Oct. 30, 2015); Reply Brief of Appellant at 21–23, *Pro-Football, Inc. v. Blackhorse*, No. 15-1874 (4th Cir. Mar. 18, 2016).

racism and white supremacy. The same would be true for marks that disparage racist and white supremacist "institutions."

Section 2(a) does not directly protect underrepresented groups. Disparaging speech abounds on the Internet and in books and songs bearing government-registered copyrights. *Amici* Blackhorse et al. (at 20–21) reprint pre-1946 registered racist logos. But the PTO never cancelled those registrations as disparaging. The government has not shown that § 2(a), as opposed to changed times and the marketplace, prevents similar registrations today or that comparable marks would return in droves absent § 2(a). And civil rights laws, not the Lanham Act, are designed to prevent such speech from interfering with access to public accommodations and employment.

The PTO has registered countless marks that meet the government's exceptionally broad definition of disparagement, *i.e.*, potentially demeaning to even a small segment of a race, gender, or religious group. Just for musical bands, the PTO has registered WHITE TRASH COWBOYS; WHORES FROM HELL; N.W.A.; CHOLOS ON ACID; REFORMED WHORES; THE POP WHORES; HOOKERS & BLOW; THE ROAST BEEF CURTAINS; FLEA MARKET HOOKERS; THE PRICKS; and BARENAKED LADIES. As to religion, the PTO has registered marks such as BUDDHA BELLY KITCHEN granola snacks and KILL THE BUDDHA apparel. The Appendix contains more examples of disparaging marks, many of which were registered well after the PTO refused to register respondent's mark in 2012 and ordered the cancellation of the Redskins registrations in 2014.

The government acknowledges (at 52) that "errors may occasionally occur." Such euphemistic understatements provide no excuse. In the First Amendment context, "good enough for government work" is not a defense. In any event, the examples are far too numerous to write off as inadvertence. The government presumably does not know how many registered marks meet the PTO's loose definition of disparagement. Nor does the government indicate what error rate would render its argument meritless.

2. Section 2(a) Cannot Be Justified As Preventing Government Association

Section 2(a) likewise does not directly further the government's interest in preventing its association with certain marks. Gov't Br. 11, 28, 36–39, 49–50. The government offers no evidence that the public associates registration with the government. It hardly needs much explanation to conclude that the public does not associate the government with marks such as THE HEBREW HILLBILLY: FIFTY SHADES OF OY VEY; ASS FACE DOLLS; or NAZI WEREWOLVES FROM OUTER SPACE. But the same is true for all marks. No one associates the government with the names of the music bands listed above, nor with CIRCLE JERKS; DEAD KENNEDYS; SEX PISTOLS; WIMPY DICKS; STEELY DAN; or LIMP BIZKIT. No one thinks about the government when buying NIKE shoes, surfing GOOGLE, or watching NATIONAL FOOTBALL LEAGUE games. Many marks, such as ACLU and NATIONAL RIFLE ASSOCIATION, represent organizations that regularly oppose government regulation.

Consumers have no idea whether marks are "registered" or what that legalese means. "The purchasing public knows no more about trademark registra-

tions than a man walking down the street in a strange city knows about legal title to the land and buildings he passes." *Application of Nat'l Distillers & Chem. Corp.*, 297 F.2d 941, 949 (C.C.P.A 1962) (Rich, J., concurring); *Application of Helene Curtis Indus., Inc.*, 305 F.2d 492, 494 (C.C.P.A. 1962) ("We will not assume any knowledge on the part of the purchasing public of mere registrations in the Patent Office[.]"). Mark owners are not required to use the ®, and many (including both respondent and the Team) do not.

Further, like trademark registrations, patents are "issued in the name of the United States of America," "under the seal of the United States Patent and Trademark Office," and must be "signed by the Director" of the PTO. 35 U.S.C. § 153. Copyright registrations issue under the "Seal of the United States Copyright Office" and are signed by the "Register of Copyrights, United States of America." U.S. Copyright Office, Sample Certification of Registration, *available at* http://www.copyright.gov/docs/certificate_sample-1-21-05.pdf. But no one thinks that the government approves, or is associated with, every patented invention or registered copyright.

The government's argument, moreover, becomes a self-fulfilling prophecy. No one today thinks that registration reflects government approval or association. But if this Court holds that it does, how will the government explain its approval of all two million registrations for every conceivable good or service? *See, e.g.*, App. A. The same would be true for every copyrighted work or patented invention.

The government's brief observes that it transmits the names of registered marks abroad. Br. 10, 12, 22, 24, 28, 37, 39, 50. But not one instance is identi-

fied where a foreign country complained to the PTO about any proposed, existing, or past registration. Nor has the government asserted that foreign countries share the PTO's view of disparagement or that the PTO considers the views of foreign countries when registering marks. The statute is not designed to further foreign policy goals. The statute permits registrations that disparage foreign countries or even continents, *e.g.*, MADE IN CHINA, FIXED IN AMERICA; NUDEAFRICA; and NOTHINGMADEINCHINA.COM. And the PTO has registered marks such as CRAZY ITALIANS and THE MEXICAN MAFIA.

3. PTO's Arbitrary Application of § 2(a) Undercuts the Government's Asserted Interests

The government's wildly inconsistent and arbitrary enforcement of § 2(a) further belies the government's asserted interests. Arbitrariness is inherent in the disparagement clause. The PTO's Assistant Commissioner presciently informed Congress in 1939 that "the word 'disparage' . . . is going to cause a great deal of difficulty in the Patent Office, because . . . it is always going to be just a matter of the personal opinion of the individual parties as to whether they think it is disparaging." *Hearings* at 21.

The PTO explains: "[T]he guidelines for determining whether a mark is scandalous or disparaging are somewhat vague and the determination of whether a mark is scandalous or disparaging is necessarily a highly subjective one." *In re In Over Our Heads*, 16 U.S.P.Q.2d 1653, *1 (T.T.A.B. 1990) (brackets and quotation marks omitted). The PTO similarly observes that whether a mark is disparaging "is highly subjective and, thus, general rules are difficult to postulate." *Harjo v. Pro-Football, Inc.*, 50

U.S.P.Q.2d 1705, *35 (T.T.A.B. 1999). Prior registrations that are "similar to the applicant's . . . do[] not bind the [PTO]." *In re Heeb Media LLC*, 89 U.S.P.Q.2d 1071, *9 (T.T.A.B. 2008).

Not surprisingly, PTO decisions are arbitrary, unpredictable, and without rhyme or reason. The government cannot explain why REDSKINS disparages Native Americans but the following registered marks, all with Native American caricature logos, do not: RED MAN chewing tobacco; CHEROKEE RED soft drinks; BIG CHIEF beef jerky; BIG CHIEF snack foods; INDIAN MOTORCYCLE apparel and motorcycles; INDIAN RIVER TRANSPORT tankers; APACHE POWERBOATS apparel; APACHE bikes; EL APACHE bingo cards; FORT APACHE musical recordings; and ESKIMO JOE'S restaurant.

The PTO also cannot explain why the name The Slants for an all Asian-American rock band disparages Asian-Americans but YELLOWMAN for a tattoo-inspired clothing line founded by an Asian-American does not. L. Munoz, *Wearing Pride on Sleeve*, L.A. Times, Jan. 17, 2008, *available at* http://articles.latimes.com/2008/jan/17/business/fi-petermui17 ("With his YellowMan brand, [designer Peter] Mui has taken a slur and turned it on its head.").

The government acknowledges (at 51) that "superficially similar marks" might be justifiably distinguished based on context or the passage of time, but does not argue that such distinctions explain any identified inconsistency. The government will not even say what *was* a mistake. Should any of the immediately preceding marks have been registered? The PTO has registered numerous marks bearing the word redneck, whose "usage . . . now includes any racist white." *The Racial Slur Database*, www.rsdb.

org/search/redneck. Take AMERICAN REDNECK SOCIETY, a social club "promoting the interest of hard-working, proud Americans"; REDNECK GANGSTA apparel; REDNECK ARMY apparel; REDNECK DEBUTANTE books; REDNECK WOMAN underwear; REDNECK CHICKS apparel; REDNECK RECORDS music; REDNECK stickers; and REDNECK BIKINI swimwear. Were any of these marks mistakenly registered? All? Some? Why?

The Federal Circuit rightly "s[aw] no rationale for the PTO's seemingly arbitrary registration decisions." Pet. App. 33a n.7. That the PTO examines many trademarks does not excuse arbitrariness, Gov't Br. 51, but rather underscores the immense consequences. Contrary to the Government's argument (*id.*), moreover, agencies cannot defend against arbitrary enforcement by preemptively declaring that they will act arbitrarily. In the face of rampant inconsistencies, § 2(a)'s disparagement clause fails *Central Hudson*. *See Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 190 (1999).

The government observes (at 52) that "erroneous registrations" may be "corrected through the process of administration cancellation." But the Act provides only for private parties or the Federal Trade Commission (FTC) to initiate cancellation. 15 U.S.C. §§ 1064, 1067; *infra* p. 29. To our knowledge, the FTC—whose mandate is to promote competition—has never sought to cancel a trademark registration for being disparaging. And the government cites no instance where the PTO cancelled a registration *sua sponte* for being disparaging or offensive. In other words, the PTO, on its own initiative, cannot cancel registrations. Thus, unless and until someone petitions for cancellation, disparaging marks remain reg-

istered *in perpetuity*. It is oxymoronic, however, to label registrations government speech if disassociation substantially depends on the action of private parties. Either the government has unfettered control over its own speech, or registration is not government speech.

It is also perverse for the government to invoke the protection of disadvantaged groups while imposing on those very groups the costly and burdensome responsibility of cleaning up the registry when the PTO doesn't get it right. For instance, women may have better things to do with their time and money than explain to PTO officials that BUCKSLUT is a crude, misogynist reference to oral sex, or that the acronym in FUPA POUCH is offensive. Nor should African-Americans have to explain to the PTO that the word "thug" in THUG PORN or THUG ARMY has a racial meaning. *See The Racially Charged Meaning Behind the Word Thug*, National Public Radio (Apr. 30, 2015), http://www.npr.org/2015/04/30/403362626/the-racially-charged-meaning-behind-the-word-thug ("[T]hug today is a nominally polite way of using the N-word.").

C. Registration Is Neither Government Speech Nor a Subsidy

1. The government asserts that "the government-speech doctrine . . . is implicated here because owners of registered marks are issued certificates in the name of the United States, and the government publishes the marks and transmits registration information to foreign countries." Br. 12. But registrations, of which there have been over three million in total since 1870, have never communicated a government message or been associated with the government. *See infra* pp. 26–28; *cf. Walker v. Tex.*

Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2248 (2015) (state license plates); *id.* at 2255, 2257, 2261 (Alito, J., dissenting) (noting Texas has "more than 350" types of specialty plates). Registration is "designed to facilitate private speech, not to promote a governmental message." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 542 (2001).

That registration is reflected on a piece of paper issued by the government is insufficient to convert private speech into government speech. "If being listed in a government database or published in a list of registrations were enough to convert private speech to government speech, nearly every action the government takes—every parade permit granted, every property title recorded, every hunting or fishing license issued—would amount to government speech." Pet. App. 45a. "The government could record recipients of parade permits in an official database or publish them weekly, thus insulating content-based grants of these permits from judicial review." *Id.* And the government's position would convert all two million registrations, covering marks created by a diverse society for countless goods and services, into government-endorsed speech. *See infra* pp. 26–28.

The government's reliance on *Rust v. Sullivan*, 500 U.S. 173 (1991), is also misplaced. *Rust* permits the government to engage in viewpoint discrimination when it uses private parties to express the government's own message. *Velazquez*, 531 U.S. at 541. *Rust* upheld a Title X provision barring clinics receiving federal funds for family-planning services from advocating abortion. 500 U.S. at 192–95. Although "*Rust* did not place explicit reliance on the rationale that the counseling activities of the doctors

under Title X amounted to governmental speech; when interpreting the holding in later cases . . . [the Court has] explained *Rust* on this understanding." *Velazquez*, 531 U.S. at 541.

The PTO does not use mark owners "to transmit specific information pertaining to [the PTO's] own program." *Id.* Upholding § 2(a) under *Rust* would permit rank viewpoint discrimination. One administration would be free to cancel registrations for NATIONAL ABORTION FEDERATION and NARAL PRO-CHOICE AMERICA as disparaging toward pro-life "beliefs," and another administration would be free to cancel registrations for ABORTION MUST END NOW and REAL FEMINISTS ARE STILL PRO-LIFE as disparaging to pro-choice "beliefs." 15 U.S.C. § 1052(a).

2. Invoking the word "program" almost 90 times in its brief, the government labels trademark registration a government program to shoehorn the PTO's regulation into this Court's subsidy cases. But "[t]he Supreme Court has never extended the subsidy doctrine to situations not involving financial benefits." *Autor v. Pritzker*, 740 F.3d 176, 183 (D.C. Cir. 2014); *accord Dep't of Tex., Veterans of Foreign Wars of the U.S. v. Tex. Lottery Comm'n*, 760 F.3d 427, 436 (5th Cir. 2014); *Bullfrog Films, Inc. v. Wick*, 847 F.2d 502, 509 (9th Cir. 1988). The Court's subsidy cases involve financial assistance: tax exemptions (*Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983)); funding to fight AIDS (*Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321 (2013)); and Medicaid reimbursement for abortion (*e.g.*, *Harris v. McCrae*, 448 U.S. 297 (1980)). Cases like *Davenport v. Washington Education Association* involved "the unique context of public-sector agency-shop arrangements," where the

government, as employer, "act[s] in a capacity *other than as regulator*." 551 U.S. 177, 188, 190 (2007) (emphasis added); *accord Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353 (2009).

Trademark registration is just like the regulatory registration of copyrights and patents, and fundamentally differs from anti-AIDS funding, Medicaid, and tax exemptions. This Court already has assumed that the patent system is regulatory. *Cleveland*, 531 U.S. at 23–24. The government has no basis for distinguishing the trademark system. The Lanham Act, just like the Copyright Act and Patent Act, is not a grant or funding statute. Trademark owners, just like copyright and patent owners, are neither government employees nor grant recipients.

The government cites no instance where any court has treated a self-described "legal proceeding" (*supra* p. 11 n.3) as a government subsidy. The registration process does not operate like a subsidy: any person who believes that he will be damaged by a registration may file an opposition with the PTO, 15 U.S.C. § 1063; and either the applicant or opposing party may seek a trial-like administrative appeal before the PTO's Trademark Trial and Appeal Board (TTAB), *id.* § 1070, with a subsequent right to judicial review, *id.* § 1071. Likewise, the benefits conferred by registration are legal rights. *Supra* p. 11. A legal right is not a subsidy, as that term has ever been understood. Legal protections for trademarks are less of a subsidy than taxpayer-funded police and fire protection for rallies. The government's position sweeps within the subsidy doctrine "every benefit or regulatory program provided by the government." Pet. App. 58a.

Even were registrations subsidies, § 2(a) is still unconstitutional because it is viewpoint-based. The government may not discriminate based on viewpoint in the "provision of financial benefits." *Rosenberger*, 515 U.S. at 834 (citing *Regan*, 461 U.S. at 548); *see, e.g.*, *Velazquez*, 531 U.S. at 548–49; *NEA v. Finley*, 524 U.S. 569, 587–88 (1998).

The disparagement clause is independently invalid because disparagement is not related to a trademark's function, operation, and purpose. Disparaging marks prevent consumer confusion and secure to owners the fruits of their investments every bit as much as non-disparaging marks. Under the government's theory, moreover, Congress could withhold registration based on content that also has nothing to do with the function of trademarks. The government could deny registration for goods it disfavors (*e.g.*, guns, fast food); services that risk injury (*e.g.*, sports, skydiving); goods that appeal to prurient interests (*e.g.*, sex toys, pornography); or marks that touch upon controversial topics regardless of viewpoint (*e.g.*, abortion, gun control).

Section 2(a) also burdens disfavored expressions in ways that denying subsidies does not. People who are denied subsidies have "a ready work-around to maintain private speech without significant disadvantage," whereas "[m]ark-holders cannot . . . realistically have two brand names." Pet. App. 52a. For instance, the owners of the registered marks DONALD TRUMP, YO-YO MA, ITZHAK PERLMAN, TAYLOR SWIFT, JENNIFER LOPEZ, JAY-Z, ADELE, CHER, MADONNA, and MARTHA STEWART cannot readily change their names.

D. Section 2(a)'s Application in the Cancellation Context Is Independently Unconstitutional

The Lanham Act permits a petition for cancellation by "any person who believes that he is or will be damaged . . . by the registration of a mark on the principal register." 15 U.S.C. § 1064. An adversarial proceeding before the TTAB then ensues, *id.* § 1067, after which the losing party may seek judicial review, *id.* § 1071. When a party seeks cancellation of a registration for being disparaging, the PTO asks whether the mark was disparaging when registered, not whether it is disparaging today. *Blackhorse v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, *10, *28–29 (T.T.A.B. 2014). Even were § 2(a)'s disparagement clause constitutional for initial refusals to register, the clause is plainly unconstitutional in the context of cancellation.

1. Cancellation Does Not Further the Government's Asserted Interests

The government's purported interests in protecting the affected group and disassociation from the mark are nonsensical in the cancellation context. The PTO never considers the meaning of the mark today; how the mark impacts the affected group; or whether any foreign country deems the mark disparaging.

For instance, the PTO granted the petition to cancel the Redskins registrations not because they disparage anyone today, but because the marks supposedly disparaged Native Americans 50 years ago, starting in 1967, when the government first registered the marks. *Id.* at *1. The PTO determined that the five Native American petitioners opposed the name, *id.* at *14, but did not otherwise consider

whether any of the other five million Native Americans today find the name disparaging. Nor did the PTO determine what foreign countries today think of the name.

Cancellation *today* does not further any legitimate government interest based on Native Americans' perception of the mark a half century ago. *Today*, the vast majority of Native Americans do not find the name offensive. A Washington Post poll this year found that "[n]ine in 10 Native Americans say they are not offended by the Washington Redskins name." J.W. Cox et al., *New Poll Finds 9 in 10 Native Americans Aren't Offended by Redskins Name*, Wash. Post, May 19, 2016. And "a 2004 poll by the Annenberg Public Policy Center found the same result." *Id.* Nor could cancellation conceivably further any need to disassociate the government from the Redskins name or to avoid transmitting the name abroad.

2. Cancellation Imposes Far Greater Burdens on Mark Owners

The burdens imposed by § 2(a) are exponentially magnified with cancellation. The government invites anyone who thinks a disparaging mark has been erroneously registered to petition the PTO to cancel the registration. This is an astonishing proposition. Delegating to over 300 million private citizens the authority to trigger the cancellation of up to two million registrations based on their subjective view of what is offensive is unconstitutional in its own right. The First Amendment does not tolerate a "heckler's veto" where the most sensitive of listeners dictate the propriety of speech for the rest of us. *E.g.*, *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001); *Reno v. ACLU*, 521 U.S. 844, 880 (1997).

Similarly, "[t]o arm millions of private citizens with such potent relief . . . unacceptably chills speech." Brief of the United States at 25, *Nike, Inc. v. Kasky*, 539 U.S. 654 (2003) (No. 02-575).

Mark owners can reasonably expect that competitors or those who want to infringe a mark may seek cancellation of a registration because the mark does not meet the criteria for being a trademark. But it is a different proposition altogether to expect that anyone who claims to be offended by a name may seek cancellation, at any time, even if no one opposes the name now except the person bringing the petition. 15 U.S.C. § 1064. To our knowledge, of the over three million trademarks registered since 1870, the PTO has never granted a petition to cancel any other registration for being disparaging or offensive. This bears repeating: the Redskins are the first and only mark owner that the PTO has retroactively singled out for cancellation under the disparagement clause (or even the scandalous clause).

It is mindboggling to think the public can challenge any and all two million active trademark registrations that may disparage any and all groups (living or dead), any and all beliefs, and any and all institutions. For instance, CAPITALISM SUCKS DONKEY BALLS, AUTHORITY SUCKS, PESSIMISM SUCKS, WORK SUCKS, PEOPLE SUCK, DEAD PEOPLE SUCK, CHEATERS SUCK, NEGATIVE PEOPLE SUCK, and YOU SUCK! are all registered. DUMB BLONDE and MEN ARE STUPID are registered too. A challenger need not show any "personal interest . . . beyond that of the general public" or "actual damage" to "establish standing or to prevail in [a] . . . cancellation proceeding." TTAB Manual of Practice § 303.03 (June 2016) (quotation marks omitted).

The potential for unfairness is breathtaking. Section 2(a) vests 300 million private citizens and PTO officials with unprecedented power to act arbitrarily, retroactively, and without warning, regardless of the harm to mark owners, brands, or consumers who trust and rely on brands. Even as applied to initial refusals to register, § 2(a) seriously chills speech by "creat[ing] a serious disincentive to adopt a mark which the government may deem offensive or disparaging." Pet. App. 31a. But the threats to speech are enormous if registrations can be cancelled after the fact at any time. In the cancellation context, § 2(a) would upend decades of "investment-backed brand development." *Id.* Faced with the prospect of cancellation after decades of investment, people and companies will eschew potentially controversial names.

The Redskins' case vividly illustrates how perniciously cancellation works. The Team adopted the Redskins name in 1933, and the PTO registered six Redskins marks on six separate occasions from 1967 to 1990. On each of the six occasions spanning these 23 years, no member of the public or Native American community objected. No one. And not once did the PTO suggest that the marks disparaged anyone.

The Team has invested tens of millions of dollars in advertising and promoting its brand. *Pro-Football, Inc. v. Blackhorse*, No. 15-1874 (4th Cir.), SA12, SA30–31, SA63–69. According to public reports, as of August 2014, the Team was valued at $2.4 billion, approximately $214 million of which is attributable to the Redskins brand. *Id.*, JA240–46. Yet, the PTO in 2014 cancelled all six registrations on the theory that the Team's name may have disparaged some unspecified percentage of Native

Americans starting in 1967. In other words, the PTO announced that it would withdraw the legal protections the federal government had been providing to the Team for over fifty years.

But by the time the PTO forced the Team in 2014 to defend its marks, key witnesses were long deceased, and key records were long gone. Had the Team known in 1967 that the PTO would take this unprecedented step decades later, the Team could have conducted contemporaneous surveys of Native Americans, preserved relevant documents, or secured testimony from witnesses, such as Team owners, Native Americans who played on the Team, former Presidents, tribal leaders, tribal representatives, and officials from the Bureau of Indian Affairs who attended Team games and supported the name.

The government has never explained how arbitrary action like this can happen in America. If the Redskins marks were disparaging by 1967, why did the PTO repeatedly register them six times over more than two decades? Why was there no contemporaneous objection to the PTO—from anyone? By 1967, the Redskins had won two NFL championships. Native Americans, like all Americans, presumably knew of the Team, as did the PTO examiners who repeatedly registered the Redskins marks over two decades. The government's brief (at 52) surmises that the PTO's workload makes occasional errors inevitable. But the notion that the PTO accidently registered the same famous mark six times is not credible, even putting aside the dubious notion that the PTO was flooded with registration applications from 1967 to 1990.

In the government's view, countless private parties can seek cancellation of other registrations. The

Redskins name is hardly the only mark free from controversy. Some of the most controversial marks touching on race in America are over a century old. M. Kern-Foxworth, *Aunt Jemima, Uncle Ben, and Rastus: Blacks in Advertising, Yesterday, Today, and Tomorrow* (1994); M.M. Manring, *Slave in a Box: The Strange Career of Aunt Jemima* (1998). The ethnic caricature logos of CHIQUITA and LAND O LAKES are also ancient. *See* A. Taube & K. Richards, *15 Racist Brand Mascots and Logos that Make the Redskins Look Progressive*, Business Insider (June 19, 2014), http://www.businessinsider.com/15-racist-brand-mascots-and-logos-2014-6. And the government argues that the PTO's delay in seeking cancellation can *never* violate due process—no matter the length, circumstances, or prejudice—because the Lanham Act provides for a pre-cancellation hearing and judicial review. Brief of the United States at 48–49, *Pro-Football, Inc. v. Blackhorse*, No. 15-1874 (4th Cir. Feb. 4, 2016).

As discussed, countless registered marks refer to Native Americans, African-Americans, Hispanics, Asians, Caucasians, women, men, the disabled, and the elderly in ways that could satisfy the PTO's exceptionally broad definition of disparaging. Many charitable groups have registered marks with names that are no longer in common use. *E.g.*, UNITED NEGRO COLLEGE FUND; NEGRO LEAGUES BASEBALL MUSEUM; ASSOCIATION FOR RETARDED CITIZENS. The two million registered mark owners should not have to face the risk that private parties will seek cancellation or that the PTO will cancel the registrations of their valuable trademarks.

* * * * *

For the above reasons, § 2(a) facially violates the First Amendment. But in the cancellation context, the government's interests are even less defensible, and the effects on free speech are even more injurious. Accordingly, no matter the outcome here, this Court should not foreclose challenges to the disparagement clause as applied to cancellation of existing registrations.

CONCLUSION

The Court should affirm the decision of the Court of Appeals for the Federal Circuit.

Respectfully Submitted,

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December 16, 2016

APPENDIX

APPENDIX A

The following are examples of some of the PTO's current and live registrations. They are available through the PTO's database. *See* PTO, Trademark Electronic Search System, http://tmsearch.uspto.gov.

AFRO-SAXONS, apparel
Reg. No. 3726710 (Dec. 15, 2009)

AMERICAN REDNECK SOCIETY, social club
Reg. No. 4062574 (Nov. 29, 2011)

ANAL FANTASY COLLECTION, sex toys
Reg. No. 4507635 (Apr. 1, 2014)

ANAL INTENSIVE, adult entertainment
Reg. No. 2698644 (Mar. 18, 2003)

ANAL RING TOSS, live adult entertainment
Reg. No. 2950588 (May 10, 2005)

ASS FACE DOLLS, image database
Reg. No. 4733121 (May 5, 2015)

BABY DADDY INSURANCE, insurance brokerage
Reg. No. 4613011 (Sept. 30, 2014)

BAKED BY A NEGRO, baked goods
Reg. No. 4424120 (Oct. 29, 2013)

BARELY LEGAL XXX, adult entertainment
Reg. No. 3063002 (Feb. 28, 2006)

BARENAKED LADIES, live music, recordings, and apparel
Reg. No. 2637871 (Oct. 22, 2002)
Reg. No. 2461404 (June 19, 2001)

BETTER THAN SEX PEARL NECKLACE, wine
Reg. No. 5016155 (Aug. 9, 2016)

BIG TITTY BLEND, coffee
Reg. No. 4616854 (Oct. 7, 2014)

BITCH, handbags
Reg. No. 4822287 (Sept. 29, 2015)

BITCH DON'T KILL MY VIBE, apparel
Reg. No. 4653950 (Dec. 9, 2014)

BITCH FACE, cosmetics
Reg. No. 3819705 (July 13, 2010)

BITCH RELAX, apparel
Reg. No. 4559906 (July 1, 2014)

BITCH SLAP, movies
Reg. No. 3998853 (July 19, 2011)

BITCHY GAY, apparel
Reg. No. 4800962 (Aug. 25, 2015)

BLACK MAN WITH A GUN, website and podcast
Reg. No. 4320289 (Apr. 16, 2013)

BLACKGIRLSDOPORN.COM, adult entertainment
Reg. No. 4718284 (Apr. 7, 2015)

BLAQMAN R E C O R D S, music
Reg. No. 4295071 (Feb. 26, 2013)

BONERBAIT, apparel
Reg. No. 5035019 (Sept. 6, 2016)

BOOBS AS BEER HOLDERS, adult entertainment
Reg. No. 4334788 (May 14, 2013)

BOOTY CALL, sex toys
Reg. No. 4243279 (Nov. 13, 2012)

BOUND GANGBANGS, adult entertainment
Reg. No. 4618921 (Oct. 7, 2014)

BOYS ARE STUPID, THROW ROCKS AT THEM, apparel
Reg. No. 4173367 (July 17, 2012)

BUCKSLUT, apparel
Reg. No. 4942407 (Apr. 19, 2016)

BUDDHA BELLY KITCHEN, snack foods
Reg. No. 4777244 (July 21, 2015)

BUSH PANTY, adult novelty items
Reg. No. 4739893 (May 19, 2015)

BUTT MACHINE BOYS, adult entertainment
Reg. No. 4902952 (Feb. 16, 2016)

BUTT NAKED SHOTZ GAME, adult board game
Reg. No. 4608831 (Sept. 23, 2014)

BUTT NAKED TOKE GAME, adult board game
Reg. No. 4751015 (June 9, 2015)

CAPTAIN CANNABIS, comic books
Reg. No. 4782920 (July 28, 2015)

CELEBRETARDS, entertainment services
Reg. No. 3751638 (Feb. 23, 2010)

CHEAP AZZ BROTHA, online comic strips
Reg. No. 4908357 (Mar. 1, 2016)

CHEAP BASTARD, travel guides
Reg. No. 3268727 (July 24, 2007)

CHOLOS ON ACID, live music
Reg. No. 4977958 (June 14, 2016)

CIRCLE JERKS, live music, recordings, and apparel
Reg. No. 3323316 (Oct. 30, 2007)

COLLEGE DILDOS, sex toys
Reg. No. 4704544 (Mar. 17, 2015)

CONTEMPORARY NEGRO, apparel
Reg. No. 4186070 (Aug. 7, 2012)

COOCH COACH, online magazine
Reg. No. 4573557 (Feb. 11, 2014)

CRAZY BITCH TOYS, sex toys
Reg. No. 4886337 (Jan. 12, 2016)

CRIPPLED BASTARD CLOTHING CBC, apparel
Reg. No. 3102969 (June 13, 2006)

CRIPPLED OLD BIKER BASTARDS, apparel
Reg. No. 4263288 (Dec. 25, 2012)

D!RTY EVERYDAY SLANG FROM "WHAT'S UP?" TO "F*%# OFF!", books
Reg. No. 3928097 (Mar. 8, 2011)

DAGO SWAGG, apparel
Reg. No. 4347624 (June 4, 2013)

DEATH BY ORGASM, sex toys
Reg. No. 3910580 (Jan. 25, 2011)

DELIBERATE ORGASM, adult entertainment
Reg. No. 3727671 (Dec. 22, 2009)

DICK BALLS, apparel
Reg. No. 4512705 (Apr. 8, 2014)

DIRTY CROTCH, underwear
Reg. No. 4840419 (Oct. 27, 2015)

DIRTY GHETTO KIDS, skateboards and apparel
Reg. No. 3859749 (Oct. 12, 2010)
Reg. No. 3859748 (Oct. 12, 2010)

DIRTY HOOKER, bumper stickers
Reg. No. 4727386 (Apr. 28, 2015)

DIRTY LITTLE BASTARDS, apparel
Reg. No. 4395877 (Sept. 3, 2013)

DIRTY WHOOORE CLOTHING COMPANY, apparel
Reg. No. 4625425 (Oct. 21, 2014)

DONKEY PISS, tequila
Reg. No. 4113159 (Mar. 13, 2012)

DOUCHEBAG REHAB, merchandise and apparel
Reg. No. 5053050 (Oct. 4, 2016)

DRTYBTCH, entertainment services
Reg. No. 4617261 (Oct. 7, 2014)

DRUNK ASS BITCHES, apparel
Reg. No. 4171393 (July 10, 2012)

DUMB BLONDE, hair products
Reg. No. 2601964 (July 30, 2002)

DUMB BLONDE, beer
Reg. No. 3983953 (June 28, 2011)

DYKE NIGHT, events and entertainment services
Reg. No. 4146588 (May 22, 2012)

EDIBLE CROTCHLESS GUMMY PANTIES, underwear
Reg. No. 2859081 (June 29, 2004)

EGOTESTICLE, education services and apparel
Reg. No. 4618149 (Oct. 7, 2014)
Reg. No. 4614980 (Sept. 30, 2014)

EROS SHEMALE ESCORTS, website for escort services
Reg. No. 4208127 (Sept. 18, 2012)
Reg. No. 4203955 (Sept. 11, 2012)
Reg. No. 4203954 (Sept. 11, 2012)

EWHIP.COM, personal sexual lubricants, digital media, and adult sexual stimulation aids
Reg. No. 4804653 (Sept. 1, 2015)

F'D UP, apparel
Reg. No. 4495813 (Mar. 11, 2014)

FART RIGHT ANAL STRIPS, adult novelty items
Reg. No. 4435481 (Nov. 19, 2013)

FAT GIRL BEER, beer
Reg. No. 5069756 (Oct. 25, 2016)

FETISH FANTASY EXTREME, sex toys
Reg. No. 4088908 (Jan. 17, 2012)

FETISH FANTASY GOLD, sex toys
Reg. No. 4672795 (Jan. 13, 2015)

FETISH FANTASY SERIES, sex toys
Reg. No. 3556369 (Jan. 6, 2009)

FETISH PLEASURE PLAY, sex toys
Reg. No. 4722732 (Apr. 21, 2015)
Reg. No. 4683056 (Feb. 3, 2015)

FLEA MARKET HOOKERS, live music
Reg. No. 4913848 (Mar. 8, 2016)

FRATERNITY DILDOS, sex toys
Reg. No. 4704546 (Mar. 17, 2015)

FREE ORGASMS!, sex toys
Reg. No. 4250231 (Nov. 27, 2012)

FREE THE NIPPLE, apparel
Reg. No. 4626305 (Oct. 21, 2014)

FUPA POUCH, fanny pack
Reg. No. 5022590 (Aug. 16, 2016)

FUSTERCLUCK MAD IN THE USA, sporting events
Reg. No. 4477536 (Feb. 4, 2014)

FYBD FIND YOUR BABY DADDY, child-support-collection services
Reg. No. 4300185 (Mar. 12, 2013)

GANGSTER PIMPIN, apparel
Reg. No. 4879861 (Jan. 5, 2016)

GHETTO BOOTY, adult entertainment
Reg. No. 2604817 (Aug. 6, 2002)

GHETTO STYLE CLOTHING, apparel
Reg. No. 1987741 (July 16, 1996)

GIRLSDOPORN.COM, adult entertainment
Reg. No. 4811839 (Sept. 15, 2015)
Reg. No. 4557728 (June 24, 2014)

G-MARKS THE SPOT, sex toys and online marketplace
Reg. No. 4347566 (June 4, 2013)
Reg. No. 3074265 (Mar. 28, 2006)

GRINGO BBQ, food delivery services
Reg. No. 4301893 (Mar. 12, 2013)

GRINGO STYLE SALSA, salsa
Reg. No. 4252304 (Dec. 4, 2012)

GROW A PAIR, merchandise and apparel
Reg. No. 4900231 (Feb. 16, 2016)

G-SPOT ACTIVATOR, sex toys
Reg. No. 4246931 (Nov. 20, 2012)

GUYBRATOR, sex toys
Reg. No. 4865256 (Dec. 8, 2015)

GYPSIES AND THIEVES, apparel
Reg. No. 4978427 (June 14, 2016)

HALF-BREED, hats
Reg. No. 2108617 (Oct. 28, 1997)

HALF BREED, live music
Reg. No. 4401483 (Sept. 10, 2013)

HANDICRAP, education and charitable services
Reg. No. 4323416 (Apr. 23, 2013)

HAUTE BUTCH, apparel
Reg. No. 4343990 (May 28, 2013)

HISLUT, dating services
Reg. No. 4153920 (June 5, 2012)

HOME OF THE G SPOT, apparel
Reg. No. 4723599 (Apr. 21, 2015)

HOMO A GO GO, entertainment services
Reg. No. 3889915 (Dec. 14, 2010)

HOMOACTIVE, online marketplace for adult entertainment
Reg. No. 3806399 (June 22, 2010)

HOMORODEO, adult entertainment
Reg. No. 4343157 (May 28, 2013)

HOOCHIE MAMA BBQ RUB, dry rub
Reg. No. 4555477 (June 24, 2014)

HOOKERS & BLOW, live music and apparel
Reg. No. 3582446 (Mar. 3, 2009)

HOT OCTOPUSS, sex toys, anti-premature ejaculation creams, and apparel
Reg. No. 4630594 (Nov. 4, 2014)

I CLEAN I JERK AND I HAVE A NICE SNATCH, apparel
Reg. No. 4798333 (Aug. 25, 2015)

I LOVE VAGINA, apparel
Reg. No. 3364871 (Jan. 8, 2008)

I WORK HARD BITCH, apparel
Reg. No. 4575506 (July 29, 2014)

JERSEY SHORE HO'S: SEX ON THE BEACH, television series
Reg. No. 3939860 (Apr. 5, 2011)

JIZZ, underwear
Reg. No. 4661382 (Dec. 30, 2014)

KILL THE BUDDHA, apparel
Reg. No. 4641100 (Nov. 18, 2014)

KINKY BITCH, sex toys and apparel
Reg. No. 4291384 (Feb. 19, 2013)
Reg. No. 3612245 (Apr. 28, 2009)

KLITORIS, sex toys
Reg. No. 4398345 (Sept. 10, 2013)

LATINA PORN EXPOSED, adult entertainment
Reg. No. 4353767 (Jun 18, 2013)

LAUGHING MY VAGINA OFF, television series
Reg. No. 4401056 (Sept. 10, 2013)

LADYGASM, sex toys
Reg. No. 4097165 (Feb. 7, 2012)

LICENSED SERIAL KILLER, apparel
Reg. No. 3935945 (Mar. 22, 2011)

LIMP BIZKIT, live music, recordings, merchandise, and apparel
Reg. No. 3922850 (Feb. 21, 2011)
Reg. No. 2621762 (Sept. 17, 2002)
Reg. No. 2485894 (Sept. 4, 2001)
Reg. No. 2345604 (Apr. 25, 2000)
Reg. No. 2343660 (Apr. 18, 2000)

LUBED.COM RAW/WET/SEX, adult entertainment
Reg. No. 5063373 (Oct. 18, 2016)

MAD MAX WHITE TRASH BASH, entertainment services
Reg. No. 4821790 (Sept. 29, 2015)

MAKE YOUR OWN DILDO, sex toys
Reg. No. 4055162 (Nov. 15, 2011)

MAMMY JAMIA'S, fruit jellies and preserves
Reg. No. 4434997 (Nov. 19, 2013)

MARIJUANA FOR SALE, online advertising
Reg. No. 4805740 (Sept. 1, 2015)

MARRIAGE CAN BE MURDER, dinner theater
Reg. No. 4547581 (June 10, 2014)

MARY JANE VIBRATOR, sex toys
Reg. No. 4928917 (Mar. 29, 2016)

MATCH-A-SNATCH, playing cards
Reg. No. 3905408 (Jan. 11, 2011)

MIDGET-MAN, condoms and inflatable sex dolls
Reg. No. 4388228 (Aug. 20, 2013)

MILF WEED, apparel
Reg. No. 4495963 (Mar. 11, 2014)

MILFSDOPORN.COM, adult entertainment
Reg. No. 4736875 (May 12, 2015)

MONKEYPORN, live music
Reg. No. 4345772 (June 4, 2013)

MURDER MURDER AND ANARCHY.COM, apparel
Reg. No. 4207774 (Sept. 11, 2012)

N.W.A., musical recordings and apparel
Reg. No. 4675580 (Jan. 20, 2015)
Reg. No. 2522163 (Dec. 25, 2001)

NAPPY ROOTS, musical recordings and apparel
Reg. No. 4579250 (Aug. 5, 2014)
Reg. No. 4545474 (June 3, 2014)

NAUGHTY NIPPLES, flavored body balm for intimate use
Reg. No. 4800464 (Aug. 25, 2015)

NERD FAP, podcasts
Reg. No. 4897824 (Feb. 9, 2016)

NEW NEGRO, apparel
Reg. No. 4014618 (Aug. 23, 2011)

NO FACES.COM SUBMIT YOUR SEX TAPE AND MAKE MONEY, adult entertainment
Reg. No. 4187922 (Aug. 7, 2012)

OH! MY NAPPY HAIR, hair products
Reg. No. 4784122 (Aug. 4, 2015)

OL GEEZER, wine
Reg. No. 3331363 (Nov. 6, 2007)

OMAZING SEX TOYS, sex toys
Reg. No. 4677907 (Jan. 27, 2015)

ORGASM.COM, adult entertainment
Reg. No. 2657616 (Dec. 10, 2002)

PARTY WITH SLUTS, apparel
Reg. No. 4388020 (Aug. 20, 2013)

PECKER WRECKER, beer
Reg. No. 5022624 (Aug. 16, 2016)

PERV CITY, adult entertainment
Reg. No. 4759909 (June 23, 2015)

PIMP $LAP!, apparel
Reg. No. 4345555 (June 4, 2013)

PIXIEDYKES.COM, apparel
Reg. No. 3993448 (July 12, 2011)

POOR WHITE TRASH PRODUCTIONS, audio and video productions
Reg. No. 5021354 (Aug. 16, 2016)

PORN STAR HIP HOP, adult entertainment
Reg. No. 4582005 (Aug. 5, 2014)

PRETTY POT HEADS, apparel
Reg. No. 5065748 (Oct. 18, 2016)

PRINCESS SLUT, writing instruments
Reg. No. 4579748 (Aug. 5, 2014)

QUEER FOLK, musical recordings
Reg. No. 4742269 (May 26, 2015)

QUEER PAL FOR THE STRAIGHT GAL, social network
Reg. No. 4699581 (Mar. 10, 2015)

QUEERS OF COMEDY, entertainment
Reg. No. 3697251 (Oct. 13, 2009)

REALLY STUPID FAST GIRLS, apparel
Reg. No. 5073899 (Nov. 1, 2016)

REDNECK, stickers
Reg. No. 5005261 (July 19, 2016)

REDNECK ARMY, posters and apparel
Reg. No. 4813949 (Sept. 15, 2015)
Reg. No. 4800643 (Aug. 25, 2015)

REDNECK BIKINI, swimwear
Reg. No. 4839776 (Oct. 27, 2015)

REDNECK CHICKS, apparel
Reg. No. 4287081 (Feb. 5, 2013)

REDNECK DEBUTANTE, books and apparel
Reg. No. 4809719 (Sept. 8, 2015)
Reg. No. 4511651 (Apr. 8, 2014)

REDNECK GANGSTA, apparel
Reg. No. 4614716 (Sept. 30, 2014)

REDNECK RECORDS, musical recordings
Reg. No. 4350411 (June 11, 2013)
Reg. No. 3851319 (Sept. 21, 2010)

REDNECK WOMAN, apparel
Reg. No. 3804876 (June 15, 2010)

REFORMED WHORES, musical recordings
Reg. No. 4582985 (Aug. 12, 2014)

RELIGION KILLS, apparel
Reg. No. 4165976 (June 26, 2012)

RETARDAISSANCE, entertainment services
Reg. No. 3739648 (Jan. 19, 2010)

RETARDIPEDIA, entertainment services
Reg. No. 3750644 (Feb. 16, 2010)

RIDE DOGGIE STYLE, condoms
Reg. No. 4800908 (Aug. 25, 2015)
Reg. No. 4783251 (July 28, 2015)

RIGHT NOW I'M HAVING INTERCOURSE, beer
Reg. No. 4246966 (Nov. 20, 2012)

SALTY BALLZ, apparel
Reg. No. 5096691 (Dec. 6, 2016)

SEE MY SEX TAPES, adult television series
Reg. No. 4056045 (Nov. 15, 2011)

SEX & VIOLENCE, beer
Reg. No. 4959725 (May 17, 2016)

SEX . . . WITH MOM AND DAD, entertainment
Reg. No. 3717062 (Nov. 24, 2009)

SEX SENT ME TO THE SLAMMER, television series
Reg. No. 4736462 (May 12, 2015)

SEX. PROFANITY. IMPLIED VIOLENCE. DRAMA. EROTICA. REAL LIFE., books
Reg. No. 4641720 (Nov. 18, 2014)

SEXY SLAVE, sex toys
Reg. No. 4727713 (Apr. 28, 2015)

SHAGAHOLIC, online dating
Reg. No. 4865182 (Dec. 8, 2015)

SHAMELESS HUSSY, wine
Reg. No. 3749687 (Feb. 16, 2010)

SHANK THE B!T@H, board games
Reg. No. 4672035 (Jan. 13, 2015)

SHUCK 'N JIVE, restaurant and bar
Reg. No. 3422438 (May 6, 2008)

SLUTLOAD, adult entertainment
Reg. No. 4303708 (Mar. 19, 2013)

SLUTNATION.XXX, adult entertainment
Reg. No. 4997723 (July 12, 2016)

SLUTSSEEKER, online dating
Reg. No. 4167423 (July 3, 2012)

SLUTTY GIRL PROBLEMS, blog and apparel
Reg. No. 4534065 (May 20, 2014)
Reg. No. 4432001 (Nov. 12, 2013)

SNATCH IT BACK, exercise videos
Reg. No. 4822744 (Sept. 29, 2015)

SNATCH MY WAIST, shapewear
Reg. No. 4579783 (Aug. 5, 2014)

SONIC VIBRATOR, sex toys
Reg. No. 4690088 (Feb. 17, 2015)

SORORITY DILDOS, sex toys
Reg. No. 4704545 (Mar. 17, 2015)

SPANK ME, creams, oils, balms, and mists for enhancing sexual arousal
Reg. No. 4713317 (Mar. 31, 2015)

SPANK ME CARDS.COM, greeting cards
Reg. No. 3916434 (Feb. 8, 2011)

SPAZ, apparel
Reg. No. 4408228 (Sept. 24, 2013)

SMACK MY ASS & CALL ME SALLY, condiments
Reg. No. 2131823 (Jan. 27, 1998)

STINKY GRINGO, alcoholic beverages
Reg. No. 3078725 (Apr. 11, 2006)

STOP BLAMING WHITE PEOPLE. IT'S THE SYSTEM, STUPID., mentoring services
Reg. No. 3818354 (July 13, 2010)

STOP COMPLAINING ABOUT YOUR BABY DADDY, YOU PICKED HIM!, apparel
Reg. No. 4441583 (Nov. 26, 2013)

SUSIE'S WHITE TRASH, candy
Reg. No. 4656958 (Dec. 16, 2014)

TAKE YO PANTIES OFF, apparel
Reg. No. 4824028 (Sept. 29, 2015)

TEENSDOPORN.COM, adult entertainment
Reg. No. 4565821 (July 8, 2014)

THANK YOU FOR POT SMOKING, stickers and apparel
Reg. No. 4564730 (July 8, 2014)
Reg. No. 4308864 (Mar. 26, 2013)

THE AFRO-SAXONS, entertainment
Reg. No. 3797627 (June 1, 2010)

THEASSGIRL, apparel
Reg. No. 4121498 (Apr. 3, 2012)

THE DITCHY: BITCH – CLEAN IT UP!, kitchen towels
Reg. No. 4569864 (July 15, 2014)

THE GHETTO COOKING SHOW, entertainment
Reg. No. 377331 (Apr. 20, 2010)

THE GUIDOS OF COMEDY, entertainment
Reg. No. 4508998 (Apr. 8, 2014)

THE HUNGARY BUDDHA EATS THE WORLD, travel and food blogs
Reg. No. 4968419 (May 31, 2016)

THE PRICKS, live music
Reg. No. 4104810 (Feb. 28, 2012)

THE POP WHORES, live music and recordings
Reg. No. 4918215 (Mar. 15, 2016)
Reg. No. 4918214 (Mar. 15, 2016)

THE ROAST BEEF CURTAINS, live music and recordings
Reg. No. 3893722 (Dec. 21, 2010)

THE SHIKSA IN THE KITCHEN, food blog
Reg. No. 4273424 (Jan. 8, 2013)
Reg. No. 4273423 (Jan. 8, 2013)
Reg. No. 4047929 (Nov. 1, 2011)

THEDILDODR.COM, sex toys
Reg. No. 4261361 (Dec. 18, 2012)

THUG ARMY, apparel
Reg. No. 5033370 (Aug. 30, 2016)

THUG PORN, adult entertainment
Reg. No. 3129121 (Aug. 15, 2006)

TRAILER PARK BOYS, television series, apparel, and merchandise
Reg. No. 3655119 (July 14, 2009)
Reg. No. 3554558 (Dec. 30, 2008)
Reg. No. 3305282 (Oct. 9, 2007)
Reg. No. 3284288 (Aug. 28, 2007)

TRANNY SURPRISE, adult entertainment
Reg. No. 3497652 (Sept. 9, 2008)

TRUST NO BITCH, apparel
Reg. No. 4193629 (Aug. 21, 2012)
Reg. No. 4100406 (Feb. 14, 2012)

UPGRADE YOUR ORGASM, sex toys
Reg. No. 4764234 (June 30, 2015)

VAJAYJAY HAT, party hats
Reg. No. 4203818 (Sept. 4, 2012)

WET URANUS, personal sexual lubricants
Reg. No. 4362322 (July 2, 2013)

WHIPPEDASS, adult entertainment
Reg. No. 3323908 (Oct. 30 2007)

WHITE BOY COOL, apparel
Reg. No. 4682976 (Feb. 3, 2015)

WHITE GIRL PROBLEMS, books and entertainment
Reg. No. 4576196 (July 29, 2014)
Reg. No. 4310754 (Mar. 26, 2013)

WHITE GIRL WITH A BOOTY, apparel
Reg. No. 3793774 (May 25, 2010)

WHITE TRASH COWBOYS, live music
Reg. No. 2882408 (Sept. 7, 2004)

WHITE TRASH REBEL, apparel
Reg. No. 4687136 (Feb. 17, 2015)

WHITE TRASH ROYALTY, apparel
Reg. No. 4177307 (July 17, 2012)

WHO DAT BABY DADDY?, paternity testing and apparel
Reg. No. 4372705 (July 23, 2013)
Reg. No. 4371049 (July 23, 2013)

WHORES FROM HELL, live music
Reg. No. 4301873 (Mar. 12, 2013)

WHY MEN LOVE BITCHES, educational materials
Reg. No. 3146007 (Sept. 19, 2006)

WHY MEN MARRY BITCHES, educational materials
Reg. No. 3413164 (Apr. 15, 2008)

WIMPY DICKS, musical recordings
Reg. No. 2514607 (Dec. 4, 2001)

WONDROUS VULVA PUPPET, stuffed toys
Reg. No. 5043896 (Sept. 20, 2016)

WTF WORK?, IT help forum
Reg. No. 4332574 (May 7, 2013)

XXX TRUTH OR DARE, adult board games
Reg. No. 4523529 (Apr. 29, 2014)

YARDAPES, landscaping services
Reg. No. 2599627 (July 23, 2002)

YELLOWMAN, apparel
Reg. No. 3539211 (Dec. 2, 2008)

YID DISH, online dating newsletter
Reg. No. 4131892 (Apr. 24, 2012)

YO' ASS FACE, image database
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